

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2003-327-C - ORDER NO. 2004-72

FEBRUARY 18, 2004

IN RE: Analysis of Continued Availability of) ORDER APPROVING
Unbundled High Capacity Loops at Certain) MOTION OF XSPEDIUS
Locations and Unbundled High Capacity) COMMUNICATIONS, *RNA*
Transport on Certain Routes Pursuant to the) LLC FOR
Federal Communications Commission's) CONFIDENTIAL
Triennial Review Order) TREATMENT OF
) INFORMATION FILED
) WITH THE
) COMMISSION

This Order is issued to approve the Motion of Xspedius Communications, LLC (“Xspedius”) that the Public Service Commission of South Carolina (“Commission”) treat Attachment 1(h) of Xspedius’s responses to BellSouth Telecommunications Inc.’s First Interrogatories filed on January 7, 2003, as proprietary and confidential. Xspedius claims that certain information contained in its Responses is extremely sensitive to Xspedius.

A review of the materials in question establishes that the materials do provide detailed information concerning Xspedius's business and practices which are sensitive. The South Carolina Freedom of Information Act ("FOIA") allows exemption from disclosure proprietary business information that meets a definition of "trade secrets." S.C. Code Ann. Section 30-4-40(a)(1) states that matters which may be exempt from FOIA

include: “(1) Trade secrets, which are defined as unpatented, secret, commercially valuable plans, appliances, formulas, or processes....Trade secrets also include, for those public bodies who market services or products in competition with others, feasibility, planning, and marketing studies, and evaluations and other materials which contain references to potential customers, competitive information or evaluation.” We find that the information for which Xspedius seeks protection as proprietary or confidential falls within this definition of materials which may be exempted from disclosure under FOIA.

By Order No. 2003-729, dated December 17, 2003, the Commission provided procedures to protect materials designated confidential by the parties. However, Order No. 2003-729 addressed how the parties would treat confidential or proprietary information and did not address how the Commission would treat materials designated as confidential or proprietary. Xspedius’s request for confidential treatment of its responses to BellSouth’s interrogatories requests that materials designated as confidential be treated as such by the Commission.

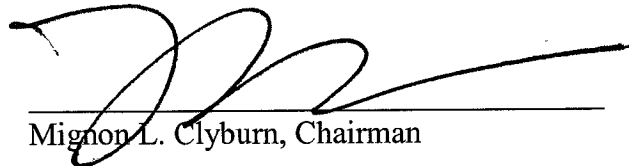
Because the Commission finds that the information filed by Xspedius is proprietary and meets the definition of “trade secrets” as defined under FOIA, the Commission grants the Motion of Xspedius. Therefore, the Commission modifies the previous Protective Order issued in this docket by specifically providing that the aforementioned information provided by Xspedius for filing with the Commission shall be considered proprietary and confidential and shall be subject to the same conditions and protections afforded by Order No. 2003-729, dated December 17, 2003.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

1. Confidential and proprietary materials filed with the Commission by Xspedius in response to discovery requests propounded by parties in this docket shall be subject to the same conditions and protections afforded by Order No. 2003-729, dated December 17, 2003.

2. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Mignon L. Clyburn, Chairman

ATTEST:



Bruce F. Duke, Executive Director

(SEAL)